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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/537,715	06/03/2005	Tim A. Von Kaenel	94.02	5473

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EXAMINER	
WU, YICUN	

ART UNIT	PAPER NUMBER
2165	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/537,715	VON KAENEL ET AL.	
	Examiner	Art Unit	
	YICUN WU	2165	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *12 February 2008*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-45* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-45* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date *1-29-08*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

III. DETAILED ACTION

1. Claims 1-45 are presented for examination.

Response to Applicant' Remarks

2. Applicant's arguments presented in the reply to previous office action filed on 2/12/2008, with respect to the rejected claims in view of the cited references have been fully considered but they are moot in view of the new grounds of rejection.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

> Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

3. Claims 16-45 lack the necessary physical articles or objects to constitute a machine or a manufacture within the meaning of 35 USC 101. They are clearly not a series of steps or acts to be a process nor are they a combination of chemical compounds to be a composition of matter. As such, they fail to fall within a statutory category. They are, at best, functional descriptive material *per se*.

Descriptive material can be characterized as either "functional descriptive material" or "nonfunctional descriptive material." Both types of "descriptive material" are nonstatutory when claimed as descriptive material *per se*, 33 F.3d at 1360, 31 USPQ2d at 1759. When functional descriptive material is recorded on some computer-readable medium, it becomes structurally and functionally interrelated to the medium and

will be statutory in most cases since use of technology permits the function of the descriptive material to be realized. Compare *In re Lowry*, 32 F.3d 1579, 1583-84, 32 USPQ2d 1031, 1035 (Fed. Cir. 1994)

Merely claiming nonfunctional descriptive material, i.e., abstract ideas, stored on a computer-readable medium, in a computer, or on an electromagnetic carrier signal, does not make it statutory. See *Diehr*, 450 U.S. at 185-86, 209 USPQ at 8 (noting that the claims for an algorithm in *Benson* were unpatentable as abstract ideas because "[t]he sole practical application of the algorithm was in connection with the programming of a general purpose computer.").

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 1-45 are rejected under 35 U.S.C. 102(e) as being anticipated over Boehmke et al., (U. S. Patent No. 7,113789 and Boehmke hereinafter).

As to claim 1, Boehmke discloses a method, comprising:

receiving a selection of customer sites (i.e. physical locations of the facilities. Abstract.) to design a network for the customer sites (abstract);

querying a database (i.e. facilities database. Col. 9, lines 50-55) to determine geographical locations of the selected network customer sites (col. 2, lines 15-25);

rendering, in a graphical user interface(i.e. graphical user interface. Abstract), representations of the selected customer sites in a map (i.e. map. Abstract) at the geographical location of the selected sites in the map (Abstract);

receiving selection of at least one network service provider (NSP) (i.e. circuits. Col. 10, lines 10-15) from a plurality of available NSPs (i.e. circuits. Col. 10, lines 10-15), wherein each available NSP provides network infrastructure available to the geographical location of the selected customer sites to provide network access at the customer sites (Col. 10, lines 10-15);

querying the database (i.e. facilities database. Col. 9, lines 50-55) to determine network infrastructure of the selected NSP and geographical locations of the determined network infrastructure (Col. 10, lines 10-15 and fig 6); and

rendering representations of the determined network infrastructure in a map at the determined geographical locations of the determined network infrastructure to render a visualization of the geographical locations of the selected customer sites and network infrastructure of the selected at least one NSP in the map to enable the design of network infrastructure for the selected customer sites (Col. 10, lines 10-15 and fig 6).

As to claim 2, Boehmke discloses a method, wherein the determined network infrastructure comprises

at least one of a switch and a network path (i.e. switches. col. 10, lines 1-10), and wherein the network infrastructure geographical location comprises at least one of a switch site location and a route of the network path(i.e. switching center. Col. 10, lines 1-10).

As to claim 3, Boehmke discloses a method, wherein the map comprises

a street map (i.e. map. Col. 3, lines 32-35), and

wherein the rendered map visualizes transportation corridors (Col. 3, lines 32-35, and fig. 6) and

wherein the rendered customer sites and network infrastructure are visualized superimposed over rendered transportation corridors in the street map (fig. 6).

As to claim 4, Boehmke discloses a method, further comprising:

receiving user selection of one rendered customer site (fig. 7);

querying the database to determine information on the selected customer site (fig. 7); and

rendering the determined information on the selected customer site in a dialog box (fig. 7).

As to claim 5, Boehmke discloses a method, further comprising:

querying network connection information in the database to determine network connections between the rendered customer sites (fig. 7); and

rendering the network connections between the customer sites in the map to visualize the determined network connections (fig. 6).

As to claim 6, Boehmke discloses a method, further comprising:

receiving a query including search criteria with respect to a parameter concerning network connectivity at the customer sites (fig. 7);

querying the database to determine network connections between customer sites having network connectivity information satisfying the search criteria included with the query (fig. 7); and

rendering the determined network connections in a different visual manner (i.e. highlighting. Col. 11, lines 55-59) than those network connections that do not satisfy the search criteria (Col. 11, lines 55-59).

As to claim 7, Boehmke discloses a method, wherein

the network connection information includes information on at least one of connected sites, connection bandwidth, and connection circuit types (col. 10, lines 5-15).

As to claim 8, Boehmke discloses a method, further comprising:

receiving a definition of a buffer region (i.e. a region. Col. 3, lines 30-35) with respect to a selected customer site c;

querying the database to determine NSP network infrastructure located within the defined buffer region (Col. 3, lines 30-35);

rendering the buffer region around the rendering of the selected customer site in the map (col. 10, lines 48-52); and

rendering the determined NSP network infrastructure within the defined buffer region in the map(col. 10, lines 48-52).

As to claim 9, Boehmke discloses a method, wherein NSP network infrastructure rendered within the defined buffer region is rendered differently than NSP network infrastructure rendered outside of the buffer region (fig. 6 and col. 10, lines 48-52).

As to claim 10, Boehmke discloses a method, further comprising:

generating a report identifying at least one of:

the network infrastructure located within the buffer region (fig. 6), the NSP managing the identified network infrastructure (col. 10, lines 1-10), and a distance of the identified network infrastructure from the selected customer site for which the buffer region is defined (col. 10, lines 1-10).

As to claim 11, Boehmke discloses a method, wherein

the network infrastructure includes network switches and network paths (i.e. switches. col. 10, lines 1-10),

wherein rendering the representations of the determined network infrastructure comprises rendering representations of the determined switches in the map (col. 10, lines 1-10), further comprising:

querying the database to determine network paths between the network switches rendered in the map (fig. 7); and

rendering the network paths between the network switches in the map (fig. 6).

As to claim 12, Boehmke discloses a method, wherein the map comprises

a street map (col. 3, lines 32-35), and

wherein the network paths are rendered superimposed over transportation corridors rendered on the map (fig. 6).

As to claim 13, Boehmke discloses a method, further comprising:

receiving user selection of a proposed path between the customer site and one network switch (i.e. selecting specific network components is provided by selecting the filters button. Col. 10, lines 45-50);

rendering the proposed path (i.e. projected and/or anticipated. col. 4, lines 1-3) in the map (fig. 6 and Col. 10, lines 45-50); and

generating and rendering information on the proposed path (i.e. projected and/or anticipated. col. 4, lines 1-3) in the map, including information on the distance of the proposed path (fig. 6).

As to claim 14, Boehmke discloses a method, further comprising:

receiving selection of a plurality of customer sites rendered in the map;

receiving a definition of parameters of a buffer region with respect to the selected customer sites (Col. 3, lines 30-35);

determining buffer regions for each of the selected customer sites satisfying the defined parameters for the buffer region (Col. 3, lines 30-35);

querying the database to determine NSP network infrastructure located within each determined buffer region (Col. 3, lines 30-35);

rendering each determined buffer region around each selected customer site in the map ((Col. 3, lines 30-35 and fig. 6); and

rendering the determined NSP network infrastructure within each defined buffer region in the map (fig. 6) and (Col. 3, lines 30-35) and (col. 10, lines 48-52).

As to claim 15, Boehmke discloses a method, further comprising:

generating a report identifying at least one of: the network infrastructure located within the determined buffer regions (fig. 6);

the NSPs managing the identified network infrastructure within the determined buffer regions (fig. 6); and,

for each selected customer site, a distance of the identified network infrastructure from the selected customer site within the buffer region for the selected customer site (fig. 6).

5. As to claims 16-45, the limitations of these claims have been noted in the rejection above. They are therefore rejected as set forth above.

Conclusion

6. **THIS ACTION IS MADE FINAL**. Applicant's amendment necessitated the new ground(s) of rejection presented in this office action. Accordingly, *THIS ACTION IS MADE FINAL. See MPEP 706.07(a).* Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory- period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136 (a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply-expire later than SIX MONTHS from the mailing date of this final action.

Point of Contact

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Yicun Wu whose telephone number is 571-272-4087. The examiner can normally be reached on 8:00 am to 4:30 pm, Monday -Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, CHRISTIAN CHACE can be reached on 571-272-4190. The fax phone numbers for the organization where this application or proceeding is assigned are 571-273-8300.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 571-272-2100.

Yicun Wu
Patent Examiner
Technology Center 2100

April 25, 2008

/Yicun Wu/

Primary Examiner, Art Unit 2165